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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,084	11/28/2001	Gregory Pulier	786515600007	1076
24325	7590	03/25/2005	EXAMINER	
STEPHEN D. SCANLON JONES DAY 901 LAKESIDE AVENUE CLEVELAND, OH 44114			NAWAZ, ASAD M	
			ART UNIT	PAPER NUMBER
			2155	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/996,084

**Applicant(s)**

PULIER ET AL.

**Examiner**

Asad M Nawaz

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

1. Claims 1-20 are presented for examination.
2. The art as cited in the information disclosure statements have been fully considered.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Goldszmidt et al (US Patent No 6,195,680) hereinafter referred to as Goldszmidt.

As to claim 1, Goldszmidt teaches a client-side apparatus for handling media capable of being provided by a plurality of provider computer systems to a client computer, comprising:

a sniffer module for use on the client computer that determines capabilities of the client computer related to handling the media wherein a first provider computer system is selected based upon the determined capabilities of the client computer, and a network connection is to be established so that the selected first provider computer

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system may provide the media to the client computer; (Abstract; col 3, lines 1-11; col 9, lines 7-22)

a metrics calculator module for use on the client computer that examines a connection characteristic of the network connection as the media is being delivered from the first provider computer system to the client computer; and (col 7, lines 10-22)

a stream switcher module for use on the client computer that includes a data pathway to the metrics calculator module, said stream switcher module ceasing delivery of the media from the first computer provider based upon the examined connection characteristic satisfying a preselected criterion, said stream switcher module selecting a second computer provider to deliver the remaining portion of the media to the client computer. (col 3, lines 12-26; col 7, lines 1-10; col 9, lines 7-22; col 10, lines 7-20)

As to claim 2, Goldszmidt teaches the apparatus of claim 1 wherein the media includes streaming media, said streamed media including video and audio data. (abstract; col 3, lines 1-11; col 3, lines 27-40)

As to claim 3, Goldszmidt teaches the apparatus of claim 1 wherein the provider computer systems are streaming media providers. (abstract; col 3, lines 1-11; col 3, lines 27-40)

As to claim 4, Goldszmidt teaches the apparatus of claim 1 wherein the sniffer module examines whether the client has the necessary components required to experience the media. (Abstract; col 3, lines 1-11; col 9, lines 7-22; col 13, line 64- col 14, line 5)

As to claim 5, Goldszmidt teaches the apparatus of claim 4 wherein the sniffer module determines bandwidth for delivering the media to the client computer, wherein a first provider computer system is selected based upon the determined capabilities of the client computer and the determined bandwidth. (col 10, lines 57-63; col 14, lines 7-20)

As to claim 6, Goldszmidt teaches the apparatus of claim 1 wherein during streaming of the media, the metrics calculator module monitors bandwidth of the streaming media being received on the client-side, and compares that measurement to a predetermined percentage of bandwidth considered to be the minimum required for an acceptable user experience. (col 14, lines 7-20)

As to claim 7, Goldszmidt teaches the apparatus of claim 6 wherein if the metrics calculator determines the bandwidth to be below the acceptable level, then the stream switcher module pauses the media stream, records current play time of the media stream, and examines a list of provider computer systems for the next available one to deliver the remaining portion of the media. (col 12, lines 17-26)

As to claim 8, Goldszmidt teaches the apparatus of claim 6 wherein the network connection includes an Internet connection over which the media is delivered to the client computer. (col 5, lines 22-30)

As to claim 9, Goldszmidt teaches the apparatus of claim 1 further comprising: a provider list file that contains available computer provider systems and their associated delivery characteristics, wherein the first provider computer system is selected based upon a comparison of the determined capabilities and the characteristics contained in the provider list file, if the first provider computer system does not maintain a bandwidth

within a preselected acceptable level, then the next available provider computer system contained in the list is selected to continue hosting the media. (col 10, lines 7-20)

As to claim 10, Goldszmidt teaches the apparatus of claim 9 wherein if none of the provider computer systems on the list is available, then a message is sent to the user announcing that the streaming media cannot be viewed at the present time. (col 14, lines )

As to claim 11, Goldszmidt teaches the apparatus of claim 10 wherein if none of the provider computer systems on the list is available, then client-side script is executed that redirects the user to a non-streaming media web page. (abstract; col 3, lines 12-26)

As to claim 12, Goldszmidt teaches the apparatus of claim 1 further comprising: a statistics collector module that collects client viewing statistics, and stores these statistics for analysis of the client computer's handling of the media and the provider computer systems' handling of the media. (col 7, lines 10-22)

As to claim 13, Goldszmidt teaches the apparatus of claim 12 wherein the statistics collected by the statistics collector module includes statistics consisting of an identifier of the streaming media being played, type of player being used, connection speed, number of lost packets of media data, number of recovered packets of media data, reception quality, what the client time zone is, how many times the stream switcher switched over to another provider computer system, how many provider computer systems were tried, which provider computer system was chosen, and combinations thereof. (col 10, lines 7-20)

As to claim 14, Goldszmidt teaches the apparatus of claim 12 wherein the collected statistics are sent to a server-side database for storage, wherein the stored statistics are used by a second sniffer module located on a second client computer in order to select a provider computer system to deliver media to the different client computer. (col 10, lines 24-40 and lines 49-63)

As to claim 15, Goldszmidt teaches the apparatus of claim 1 further comprising: multiple provider hosting code located on the client computer that is added to code for handling the streaming of the media. (col 12, lines 22-27)

As to claim 16, Goldszmidt teaches the apparatus of claim 15 wherein the code that handles the streaming of the media is hypertext markup language (HTML) code. (col 12, lines 47-57; col 13, lines 5-13)

As to claim 17, Goldszmidt teaches the apparatus of claim 15 wherein the metrics calculator module examines the connection characteristic when the streaming of the media occurs. (col 7, lines 10-22)

As to claim 18, Goldszmidt teaches the apparatus of claim 1 where delivery optimization occurs in real-time as the media is being received at a client system.

As to claim 19, Goldszmidt teaches the apparatus of claim 18 wherein the preselected criterion is delivery bandwidth, wherein the stream switcher module switches to the second provider computer system in order to ensure streaming media is substantially continuously played at a desired bandwidth. (col 3, lines 12-26; col 7, lines 1-10; col 9, lines 7-22; col 10, lines 7-20)

As to claim 20, Goldszmidt teaches a computer-implemented method for handling media capable of being provided by a plurality of provider computer systems to a client computer, said method being performed on the client computer and comprising the steps of:

determining capabilities of the client computer related to handling the media;  
(Abstract; col 3, lines 1-11; col 9, lines 7-22)

determining bandwidth for delivering the media to the client computer; (Abstract; col 3, lines 1-11; col 9, lines 7-22)

selecting a first provider computer system based upon the determined capabilities of the client computer and upon the determined capabilities of the client computer and the determined bandwidth; . (col 3, lines 12-26; col 7, lines 1-10; col 9, lines 7-22; col 10, lines 7-20)

establishing a network connection so that the selected first provider computer system provides the media to the client computer; . (col 3, lines 12-26; col 7, lines 1-10; col 9, lines 7-22; col 10, lines 7-20)

examining bandwidth of the network connection as the media is being delivered from the first provider computer system to the client computer; . (col 3, lines 12-26; col 7, lines 1-10; col 9, lines 7-22)

ceasing delivery of the media from the first computer provider based upon the examined bandwidth satisfying a preselected criterion; (col 3, lines 12-26; col 7, lines 1-10)



selecting a second computer provider to deliver the remaining portion of the media to the client computer; . (col 3, lines 12-26; col 7, lines 1-10; col 9, lines 7-22; col 10, lines 7-20)

examining bandwidth of the network connection as the media is being delivered from the second provider computer system to the client computer; . (col 3, lines 12-26; col 7, lines 1-10; col 9, lines 7-22)

ceasing delivery of the media from the second computer provider based upon the examined bandwidth associated with the second provider computer system satisfying a preselected criterion; . (col 3, lines 12-26; col 7, lines 1-10)

and selecting a third computer provider to deliver the remaining portion of the media to the client computer. . (col 3, lines 12-26; col 7, lines 1-10; col 9, lines 7-22; col 10, lines 7-20)

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asad M Nawaz whose telephone number is (571) 272-3988. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (571) 272-3978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AMN

  
BHARAT BAROT  
PRIMARY EXAMINER